

## Assembly Bill No. 441

### CHAPTER 511

An act to amend Section 1644.5 of the Health and Safety Code, relating to health.

[Approved by Governor September 28, 1997. Filed  
with Secretary of State September 29, 1997.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 441, Richter. Tissue donors: sperm donors.

Existing law prohibits the transfer of any tissues, as defined, into the body of another person unless the donor of the tissues has been screened and found nonreactive for evidence of infection with HIV, agents of viral hepatitis, human T lymphotropic virus-1, and syphilis.

This bill would create an exception to that prohibition by authorizing a recipient of sperm to consent to therapeutic insemination of sperm or other reproductive use of sperm even if the donor of the sperm is found reactive for hepatitis B, hepatitis C, or syphilis, if the sperm donor is the spouse, partner, or designated donor, of the recipient and if certain other conditions are met.

Existing law prohibits using tissues from donors who test reactive for agents of viral hepatitis (HBV and HCV), human T lymphotropic virus-1 (HTLV-1), or syphilis in California for transplantation by means of therapeutic insemination or ingestion.

This bill would delete this prohibition. The bill would also prohibit the deposit of human breast milk into a milk bank for human ingestion when the milk is from donors who test reactive for agents of viral hepatitis (HBV and HCV), human T lymphotropic virus-1 (HTLV-1), HIV, or syphilis.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1644.5 of the Health and Safety Code is amended to read:

1644.5. (a) No tissues shall be transferred into the body of another person by means of transplantation, unless the donor of the tissues has been screened and found nonreactive by laboratory tests for evidence of infection with HIV, agents of viral hepatitis (HBV and HCV), human T lymphotropic virus-1 (HTLV-1), and syphilis. The state department may adopt regulations requiring additional screening tests of donors or tissues when, in the opinion of the state department, the action is necessary for the protection of the public, donors, or recipients.

(b) Notwithstanding subdivision (a), infectious disease screening of blood and blood products shall be carried out solely in accordance with Article 2 (commencing with Section 1601) of Chapter 4.

(c) All donors of sperm shall be screened and found nonreactive as required under subdivision (a), except in the following instances:

(1) A recipient of sperm, from a sperm donor known to the recipient, may waive a second or other repeat testing of that donor if the recipient is informed of the requirements for testing donors under this section and signs a written waiver.

(2) A recipient of sperm may consent to therapeutic insemination of sperm or use of sperm in other advanced reproductive technologies even if the sperm donor is found reactive for hepatitis B, hepatitis C, or syphilis if the sperm donor is the spouse of, partner of, or designated donor for that recipient. The physician providing insemination or advanced reproductive technology services shall advise the donor and recipient of the potential medical risks associated with receiving sperm from a reactive donor. The donor and the recipient shall sign a document affirming that each comprehends the medical repercussions of using sperm from a reactive donor for the proposed procedure and that each consents to it. Copies of the document shall be placed in the medical records of the donor and the recipient.

(3) Sperm whose donor has tested reactive for syphilis may be used for the purposes of insemination or advanced reproductive technology only after the donor has been treated for syphilis. Sperm whose donor has tested reactive for hepatitis B may be used for the purposes of insemination or advanced reproductive technology only after the recipient has been vaccinated against hepatitis B.

(d) Subdivision (a) shall not apply to the transplantation of tissue from a donor who has not been tested or, with the exception of HIV, has been found reactive for the infectious diseases listed in subdivision (a) or for which the state department has, by regulation, required additional screening tests, if both of the following conditions are satisfied:

(1) The physician and surgeon performing the transplantation has determined any one or more of the following:

(A) Without the transplantation the intended recipient will most likely die during the period of time necessary to obtain other tissue or to conduct the required tests.

(B) The intended recipient already is diagnosed with the infectious disease for which the donor has tested positive.

(C) The symptoms from the infectious disease for which the donor has tested positive will most likely not appear during the intended recipient's likely lifespan after transplantation with the tissue or may be treated prophylactically if they do appear.

(2) Consent for the use of the tissue has been obtained from the recipient, if possible, or if not possible, from a member of the

recipient's family, or the recipient's legal guardian. For purposes of this section, "family" shall mean spouse, adult son or daughter, either parent, adult brother or sister, or grandparent.

(e) Human breast milk from donors who test reactive for agents of viral hepatitis (HBV and HCV), human T lymphotropic virus-1 (HTLV-1), HIV, or syphilis shall not be used for deposit into a milk bank for human ingestion in California.

